

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN EDWARDS,

Plaintiff,

CIVIL ACTION NO. 13-cv-14060

v.

DISTRICT JUDGE MARK A. GOLDSMITH

**COMMISSIONER OF
SOCIAL SECURITY,**

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

REPORT AND RECOMMENDATION

I. RECOMMENDATION

The undersigned recommends that the instant Complaint (Docket no. 1) seeking judicial review of the Commissioner's decision to deny Social Security Disability Insurance Benefits and Supplemental Security Income be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

II. REPORT

Plaintiff Kevin Edwards filed a civil action with the Court on September 23, 2013 seeking review of a final decision of Defendant Commissioner of Social Security's denial of Plaintiff's application for benefits. (Docket no. 1.) On September 30, 2013, the Court granted Plaintiff's Application to Proceed *In Forma Pauperis* and denied service by the U.S. Marshals as it was not requested. (Docket no. 5.) There is no record that Plaintiff served Defendant with his Complaint. On March 24, 2014, the Court entered and served an Order To Show Cause directing Plaintiff to respond in writing on or before April 7, 2014, and explain why the case "should not be dismissed

for failure to comply with Fed. R. Civ. P. 4(m)." (Docket no. 7.) The Order To Show Cause advised that failure to respond may result in dismissal of the case. (*Id.*) The Order was served on counsel of record for both parties. (*Id.*)

The time for service of the summons and complaint is established under Federal Rule of Civil Procedure 4(m), which provides that service must be made within 120 days after the filing of the complaint. "If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). Plaintiff has filed nothing with the Court since his initial Complaint and Application to Proceed *In Forma Pauperis* on September 23, 2013 and September 24, 2013, respectively. (Docket nos. 1 and 4.) Service has not been effected on Defendant within the time allotted under Rule 4(m). To date, Plaintiff has not responded to the Court's Order to Show Cause and has not shown good cause to further extend the time for service. Accordingly, the undersigned recommends that Plaintiff's Complaint be dismissed without prejudice for failure to comply with Federal Rule of Civil Procedure 4(m).

REVIEW OF REPORT AND RECOMMENDATION

Either party to this action may object to and seek review of this Report and Recommendation, but must act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing objections which raise some issues but fail to raise

others with specificity will not preserve all objections that a party might have to this Report and Recommendation. *See Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Rule 72.1(d)(2) of the Local Rules of the United States District Court for the Eastern District of Michigan, a copy of any objection must be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than five (5) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Dated: October 7, 2014

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Counsel of Record on this date.

Dated: October 7, 2014

s/ Lisa C. Bartlett
Case Manager